

TRANSCRIPT OF PROCEEDINGS

Ref. G00BS528

IN THE BRISTOL CIVIL AND FAMILY JUSTICE CENTRE

2 Redcliff Street
Bristol

Before HIS HONOUR JUDGE RALTON

IN THE MATTER OF

PLACES FOR PEOPLE HOMES LTD (Claimant)

-v-

EMMA WAITE (Defendant)

MRS TALBOT, instructed by Capsticks Solicitors, appeared on behalf of the Claimant

THE DEFENDANT did not attend and was not represented

JUDGMENT

20th AUGUST 2020, 11.02-11.19

(AS APPROVED)

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JUDGE RALTON:

1. This case could be summarised as a noise nuisance case. Places for People Homes Limited is a well-known provider of social housing. There is a building at York Buildings, 100-106 York Road, Bedminster, Bristol, which is divided into flats. I gather that the structure of the building is that it is four storeys with two flats on each level.
2. On 19 March 2020, Places for People issued a claim for an injunction against one of its tenants, Miss Emma Waite, who occupies flat 11, which I am told is on the ground floor of the building. The application was for an injunction order with respect to noises and it was supported by a witness statement of Miss Joelle Brobin, who is one of the claimant's tenancy enforcement managers.
3. The essence of Miss Brobin's evidence in support of the application for an injunction was that Miss Waite was an assured tenant of number 11. Another tenant is Miss Jessica Ion of flat 13. Flat 13 is immediately above flat 11. Miss Ion started to make complaints about the noise emanating from Miss Waite's flat from 18 March 2019 and Places for People, the claimant, took action escalating to warning letters. It being pointed out to Miss Waite that her tenancy agreement contained certain conditions, which we used to call covenants, about respecting others, not causing nuisance and, in particular, at clause 3.10, not to use or allow record players or radios, tape recorders, MP3 players, television, CD players, amplifiers, loudspeakers, musical instruments, or other audio visual equipment of any kind in a way that will annoy other people so they can be heard outside the premises.
4. It seems that matters settled down for a while, but, unfortunately, Miss Ion made further complaints later on in 2019 when she emailed her landlord in November 2019 complaining about, again, noise from Miss Waite's flat.
5. As I said earlier, when considering abridgement of service, the application for the injunction was served on Miss Waite and she appeared at the hearing as a litigant in person before District Judge Rowe on 17 April 2002. On that date District Judge Rowe made the following orders against Miss Emma Waite forbidding her: (1) from playing music or creating any other form of noise in that home at flat 11 York Buildings at a level which could be heard outside of the confines of that home at any time. (2) From causing noise nuisance anywhere and at any time in York Buildings, or in the locality of the building as a whole. Permission was granted for service of the order by way of the letterbox of Miss Waite's flat, but, of course, she was present when the district judge made the injunction order that she did.
6. Unfortunately, notwithstanding the injunction order, Miss Ion has had cause to complain to Places for People that there have been further occasions of noise nuisance. That has resulted in an application for a committal to prison for breach of the order, the procedure for which is governed by pat 81 of the Civil Procedure Rules. The application was received by the court on 25 June 2020. It sets out five allegations, all of which can be summarised as five separate occasions of noise nuisance. The evidence in support comprises an affidavit of Miss Brobin, the tenancy enforcement officer. She has no first-hand knowledge of any of the noise nuisance, but she draws attention to Miss Ion's complaints and the recordings of noise made by Miss Ion. The application is further supported by a witness statement from Miss Jessica Ion.

7. I have dealt with the matter of service. Today Places for People Limited appears by counsel, Miss Talbot, who has helped me with her submissions and her skeleton argument. Although the evidence of Miss Brobin and Miss Ion is already sworn, having been produced in affidavit form, both have gone into the witness box and have confirmed their affidavits. No corrections have been made to the affidavits and I have been given a little more detail. Of course, I have not heard from Miss Ion.

8. I have to be cautious because noise can be a very subjective matter. There were no calibrated decibel readings available in this case. What I have are recordings taken by Miss Waite, presumably on a smart phone, or similar, which have been presented to the court on USB sticks. They have been played back. The locality in all but one is just outside Miss Waite's door; another recording is within Miss Ion's home.

9. There are obvious cautions one has to have. There is the matter of the sensitivity of the recording microphone, the recording levels in the first place, and then the playback controls, especially the volume controls. The USB sticks were played back to me on a laptop. And, yes, I could hear music outside of Miss Waite's door, and, yes, I could hear music in Miss Ion's flat, which Miss Ion says came from Miss Waite.

10. What was important for me was hearing more from Miss Ion about the impact of the music on her. Miss Ion told me that, in fact, for a while she escaped the problem of the new noise nuisance by staying with her father in another place altogether. Unfortunately, that relationship broke down and therefore Miss Ion found herself having to live in her flat at flat 11. Furthermore, she has been furloughed and therefore, no doubt, within flat 11 all the more, and I gather that although she is now working, she is still working from home.

11. She has impressed me with the degree of upset that she has had by this noise nuisance penetrating her home. It has given me the clear impression that the noise has caused her considerable discomfort, upset and disturbance. On occasion the noise occurs during ordinary waking hours, but one of the allegations is that the noise commenced at 12.40 am on 29 May 2020. The first question that I must ask myself is, having heard the evidence, am I satisfied that I am sure that on the five occasions relied on by Places for People Homes Limited that Miss Waite was in breach of the injunction order granted by District Judge Rowe?

12. Having heard the two witnesses and having read their affidavits and having heard the recordings and having seen the impact of the music, which has varied from anything from Ed Sheeran to reggae-type music, and having seen the impact the noise nuisance upon the primary victim, Miss Ion, I am persuaded and I am satisfied that I am sure that Miss Waite is in breach of the injunction order in respect of all five occasions.

13. I must then move on to consider penalty. The first question I have asked myself is, having found the breaches proven, should I nonetheless adjourn to a sentencing hearing to give Miss Waite the opportunity to present such mitigation as she wishes to present? The difficulty that I have with that particular course lies with Miss Waite's complete non-engagement and I am fearful that if I put off sentencing to another day I will simply be addressing, so far as sentencing is concerned on Miss Waite's side, an empty courtroom. Therefore, I am going to proceed to sentence in her absence.

14. I remind myself first and foremost of the philosophy of the county court, which is different to the philosophy of the crown or the magistrates' court. The county court does not wish generally to punish persons who are in breach of its orders. The county court's objective is to secure compliance with its orders. The penalties available to the county court are extraordinarily limited and do not begin to mirror the various penalties, the sanctions available in the criminal courts. My powers are to imprison for a term of up to two years, to fine, or to sequester assets. Well, fining or sequestering assets does not tend to be of any value in cases such as these. What I do not have is any power to impose community orders or such like.

15. My attention is drawn to the sentencing guidelines drawn for breach of a criminal behaviour order, also applicable to breach of an anti-social behaviour order. I have to have regard to these guidelines, insofar as I can, bearing in mind that the guidelines are addressed to the criminal courts considering the various forms of penalty available in the criminal courts.

16. Miss Talbot's argument can be summarised as saying that the custody threshold is met. What I have to consider are two aspects: (1) culpability, and (2) harm. So far as culpability is concerned, the questions are, is it A very serious or persistent breach, B deliberate breach falling between A and C, and C minor breach, a breach just short of reasonable excuse. On the evidence that I have this would appear to be deliberate breach falling between A and C, at the top end of B. I am not convinced it falls into culpability A, not least because this is the first time committal proceedings have been brought against Miss Waite.

17. So far as categories are concerned, category 1 is for breach causing very serious harm or distress, or demonstrating a continuing risk of serious criminal and/or anti-social behaviour. Category 2 is cases falling between categories 1 and 3. And then there is category 3: breach causes little or no harm or distress, breach demonstrates a continuing risk of minor criminal and/or anti-social behaviour. I consider that this is a category 2 case. What must be observed on behalf of Miss Waite is there is no suggestion of violence; this is pure anti-social behaviour.

18. Having identified this as a B2 case, the guidelines suggest that the starting point is 12 weeks' custody, the category range being medium level community order, which I cannot do, to one year's custody. This court needs to send a clear message to Miss Waite that she is in breach of the injunction order and it must take action to attempt to secure Miss Waite's compliance with the injunction order. It seems to me that Miss Talbot is right in arguing that the custody threshold is met. For each of the five breaches, I consider a concurrent term of imprisonment of 28 days is appropriate.

19. As this is the first occasion that Miss Waite is before the court in proceedings, I give thought to whether or not I should suspend the sentence. Because my objective is to secure compliance with the injunction order I am going to suspend the sentence and I am going to do so for a period of one year, conditional on compliance with the injunction order granted by District Judge Rowe.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.